IN THE HIGH COURT OF JUDICATURE
AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REFERENCE NO.11 OF 2001

Shri B.M. Khodade ..Petitioner

Vs.

Shri Kumar Saptarshi ..Respondent

Mr. B.H. Mehta, APP for State.
Mr. Uday Warunjikar for respondent.

Coram: B.H. Marlapalle &
Naresh H. Patil, JJ.

Reserved on : October 5, 2006.

Pronounced on : October 10, 2006.

JUDGMENT : (Per B.H. Marlapalle,J.) :

1. This is a reference made under Section 15(2) of the Contempt of Courts Act, 1971 (the Act for short) made by Shri B.M. Khodade, Deputy

Charity Commissioner, Pune Region, Pune, as then the learned Judge was. Scheme Application No.28 of 2000 filed under Section 50-A(1) of the Bombay Public Trusts Act, 1950 was pending on the file of the Deputy Charity Commissioner and after oral as well as documentary evidence was placed on record and arguments were advanced by the learned Advocates of the respective parties, the application came to be decided on merit on 29/3/2001 and the scheme in respect of the trust came to be framed. On 17/4/2001 the present respondent held a press conference at Pune and allegedly made reckless and unfounded allegations against the Deputy Charity Commissioner. The report of the press

conference was published in some of the Marathi newspapers like Sakal, Loksatta and Lokmat and cuttings of the said news items have been annexed to the reference. It is also stated in the reference that Smt.Urmila Saptashri, the wife of the respondent was the Secretary of the concerned Trust i.e. Maharashtra Girl's Education Society in respect of which the scheme was finalised on 29/3/2001. In one of the newspapers (Lokmat) the press conference report was covered in more details and the press conference was addressed by the respondent along with Shri Sudhir Nirfarake, Advocate and Shri Ravindra Dhanak and some other persons representing few other organistions were also present. As per

the said report the respondent, inter alia, alleged against Shri Khodade as under (verbatim in Marathi):-

"महाराष्ट्र गर्ल्स एज्युकेशन सोसायटी (हुजूरपागा प्रशाला) या संस्थेची कार्यकारिणी अचानक बरखास्त करून वादग्रस्त लोकांची नवीन कार्यकारिणी खोडदे यांनी नियुक्त केली. या प्रकारात फार मोठया प्रमाणावर भ्रष्ट्राचार झाल्याचा आरोप सप्तर्षी यांनी केला होता...."

2. This news report went to show that the Deputy Charity

Commissioner passed the order on 29/3/2001 by taking money and, therefore, based on these press reports a show-cause notice came to be issued, first to the three newspapers on 3/7/2001 and thereafter to the present respondent on 30/8/2001. The newspapers replied the notice and generally took the stand that the news reported was as per the press conference held by the respondent and others. The respondent submitted his reply to the show-cause notice on 6/9/2001 and the reference came to be forwarded to this court by the Deputy Charity Commissioner

vide his letter dated 10/9/2001.

3.On issuance of notice by this court as per the order dated 30/11/2001, the respondent appeared on 14/1/2002 and on 21/2/2002 affidavit-in-reply was filed by reiterating that the Deputy Charity Commissioner is not the court or subordinate court within the meaning of the Act and, therefore, the reference was not maintainable. The respondent claims to be the Editor of a magazine by name “Satyagrahi” and in its issue of May 2001 he published a letter addressed to the Hon'ble the Chief Justice of this court, a copy of which was annexed to the affidavit-in-reply. The respondent claimed that he is the crusader against corruption and,

therefore, he held the press conference to cleanse the judiciary from corruption/mal practices. He also claimed that at his instance an inquiry was initiated against Shri Khodade.

4. By the reasoned order dated 22/3/2002 this court rejected the contention that the Deputy Charity Commissioner was not a court within the meaning of the Act. This court also recorded a prima facie satisfaction that there was a case of contempt made out and, therefore, directed notice to be issued against the respondent, including all those allegations made by him in his reply to the notice. An additional affidavit-in-reply came to be filed on 3/10/2006 reiterating the earlier reply and praying for

leave to take the defence of truth by allowing the respondent to lead evidence. Having gone through the additional affidavit of the respondent, we were satisfied that the documents referred to therein should be allowed to be placed on record. We have also noted that the allegations of contempt against the petitioner were with reference to the order passed by the Deputy Charity Commissioner on 29/3/2001 in Scheme Application No.28 of 2000 pertaining to a public trust by name “Maharashtra Girl's Education Society” wherein the respondent's wife was the secretary at the relevant time and, therefore, we called upon him to furnish any material from his personal knowledge or that of his wife

regarding payment of money to Shri Khodade before or after he passed the said order by any of the parties in whose favour the order was passed. The respondent reiterated that he stood by the charge levelled against Shri Khodade in his press conference and as reproduced hereinabove and that he had never paid any money to anyone in his life time and at the same time he had no personal knowledge of any amount having been paid to Shri Khodade either in his presence or in the presence of his wife. However, he maintained that he being the President of an organisation called " Yukrand" (Yuvak Kranti Dal) he had received several complaints of malpractices/corruption against Shri Khodade and, therefore, he should be

allowed to examine all such third party witnesses who had complained to him against Shri Khodade. Having regard to the averments made in the additional affidavit and in any case there was no civil application filed for any such reliefs, we considered the documents placed on record as referred to in the additional affidavt and we noted that so far as the allegation made against Shri Khodade in respect of money transaction while passing the order dated 29/3/2001 in Scheme Application No.28 of 2000, there was no prima facie material on record, we deemed it appropriate to proceed to decide this reference on merits and called upon the learned counsel for the respondent to address us.

5. The learned counsel for the respondent reiterated that the respondent is a social worker, a political figure, was once elected as member of the Maharashtra Legislative Assembly and is a crusader against corruption. He is committed for cleansing judiciary from any malpractices and to maintain the judiciary clean so as to repose in it confidence of a common man. By referring to the so called letter published in the magazine and addressed to the Hon'ble the Chief Justice, it was submitted that the intention of the respondent was in the interest of judiciary as an institution and the allegations were not against the institution but against the individual. During the course of the arguments also it was

put before us that the respondent stood by the press report and more particularly allegations against Shri Khodade as reproduced hereinabove. But he maintained that the respondent cannot be held to be guilty of contempt within the meaning of Section 2(c) of the Act even if he had levelled the above stated charges against Shri Khodade. The learned counsel further claimed that Shri Khodade was removed from service consequent to the complaint submitted by the respondent to this court and that by itself would indicate that he was justified in making such public statements against Shri Khodade. The respondent's allegations have served a public purpose and when the allegations have been acted upon for

further investigation, by no stretch of imagination he could be held to be guilty of contempt, leave alone any punishment.

6. In the case of K. Shamrao and ors. vs. Assistant Charity Commissioner [(2003) 3 SCC 653] the Supreme Court has held that the office of Charity Commissioner is a court within the meaning of the Act and, therefore, the preliminary issue raised by the respondent and as was rejected by this court by the earlier order dated 22/3/2003 is finally settled and the said defence is not available to the respondent any more. Whether Shri Khodade was fit for holding the post of Deputy Charity Commissioner which the respondent wanted to

highlight by leading evidence is an issue which is not germane to the present reference and the limited issue is whether the utterances of the respondent against Shri Khodade amounted to or tended to scandalise, or lower the authority of any court, prejudices, or interferes or tends to interfere with the due course of any judicial proceeding or interferes or tends to interfere with or obstruct or tends to obstruct the administration of justice in any other manner. As noted earlier, the respondent has repeatedly reiterated what he stated in the press conference on 17/4/2001 against Shri Khodade and, therefore, the said statement, as reproduced hereinabove, made by the respondent tends to scandalise and tends to lower the authority of

the Deputy Charity Commisioner. It also tends to interfere with the due course of judicial proceedings in as much as such utterances would tend to impede and scare the courts from acting without fear or favour.

7. Two more defences which the respondent has taken are also required to be dealt with. At the first place he has pointed out that the press conference was held on 17/4/2001 and the show-cause notice was issued on 3/7/2001 first to the newspapers and to him on 30/8/2001. Thus, the notices were issued by way of an after thought and only to harass the respondent. If the Deputy Charity Commissioner was so concerned, there was no reason why he did not

deem it appropriate to send the notices immediately in the month of April or May 2001. The second defence taken is that in the press conference addressed by the respondent, along with him, two or three other speakers also addressed the conference and one of them, namely, Shri Sudhir Nirfarake, Advocate had also stated regarding the mal practices adopted to by Shri Khodade. However, no show-cause notice was issued against him. This clearly indicated that the respondent was intentionally picked up and this smacked of malice on the part of Shri Khodade, submitted by the learned counsel. We are not impressed by these arguments on both the counts so as to defeat this reference. So far as the respondent is

concerned, he has reiterated the allegations made aginst Shri Khodade in the press conference and in this reference we are required to consider whether the said allegations amounted to contempt within the meaning of Section 2(c) of the Act. Some other equally guilty persons were not proceeded aginst on the charge of contempt when they also could be called as co-accused cannot be a defence available to defeat the motion of contempt.

8. The press conference addressed by the respondent has a direct nexus with the order passed by Shri Khodade on 29/3/2001 in Scheme Application No.28 of 2000 and it cannot be, therefore, called as an action by the

respondent for the avod object of cleansing the judiciary as claimed by him. He cannot also take the defence of his so called open letter addressed to the Hon'ble the Chief Justice and published in his magazine “Satyagrahi”. From the record we have noted that the said letter was forwarded by Hon'ble Shri Justice C.S. Dharmadhikari (Retired) to the Principal Secretary, Law and Judiciary vide his letter dated 8/5/2001 and, in turn, the Secretary in the Department of Law and Judiciary forwarded the said letter to this court on 28/5/2001. The Special Investigation Department of the Registry of this Court conducted an inquiry, statements of the persons concerned were also recorded and the report made on 11/10/2004

clearly stated that there was no substance in the allegations made in the said letter against Shri Khodade. The file was, therefore, directed to be closed by this court (on administrative side) on 15/10/2004. The respondent's contentions that Shri Khodade was removed on account of his initiative are also ill-founded and the record shows that on reaching the age of 58 years Shri Khodade was denied the benefit of retirement at the age of 60 years, on the basis of the Special Review Committee's recommedations which found that his performance from the year 1997-98 onwards was poor. He was thus treated as a dead wood on reaching the age of 58 years. He was retired sometimes in August 2004. This action has no connection with the so called

campain of the respondent.

9. Under the amended provisions of Section 13 of the Act, the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide .(emphasis supplied by us). Notwithstanding, whether this amended provisions has been brought into force or not, as noted earlier, on consideration of the additional affidavit filed by the respondent, we are satisfied that the request made for leading evidence was not in public interest and it was not intended as a bona fide defence of examining such witnesses who had allegedly

approached the respondent and purportedly stated about Shri Khodade being a corrupt judge. The refeerence of contempt is in relation to a specific incident i.e. the order passed in Scheme Application No.28 of 2000 on 29/3/2001. By the press conference the respondent certainly acted in a manner creating a wrong impression in the mind of the people regarding the integrity and fairness of the concerned Deputy Charity Commissioner and it cannot be in the realm of freedom of speech and expression. We may usefully quote from C. Ravichandran Iyer's case [(1995) 5 SCC 457] as under:-

> “It is true that freedom of speech and expression guaranteed by

Article 19(1)(a) of the Constitution is one of the most precious liberties in any democracy. But equally important is the maintenance of respect for judicial independence which alone would protect the life, liberty and reputation of the citizen. So the nation's interest requires that criticism of the judiciary must be measured, strictly rational, sober and proceed from the highest motives without being coloured by partisan spirit or pressure tactics or intimidatory attitude. The Court must, therefore, harmonise

constitutional values of free criticism and the need for a fearless curial process and its presiding functionary, the Judge. If freedom of expression subserves public interest in reasonable measure, public justice cannot gag it or manacle it; but if the court considered the attack on the Judge or Judges scurrilous, offensive, intimidatory or malicious, beyond condonable limits, the strong arm of the law must strike a blow on him who challenges the supremacy of the rule of the law by fouling its source and stream. The power to

> punish the contemner is, therefore, granted to the court not because Judges need the protection but because the citizens need an impartial and strong judiciary."

The allegations made by the respondent against the Deputy Charity Commissioner also do not deserve the protection of Section 6 of the Act and, therefore, we are satisfied that the contempt of the Deputy Charity Commissioner is of such a nature that it substantially interferes or tends substantialy to interfere with the due course of justice and consequently the respondent deserves to be punished. His reliance on the decision in the case of Arundhati

Roy, In Re, Suo Motu Contempt Petition (Cri.) No.10 of 2001 [(2002) 3 SCC 343] is misplaced.

10. We, therefore, hold that the requirements of Section 13 of the Act are satisfied in this case and the respondent Shri Kumar Saptarshi is guilty of contempt of the court of Deputy Charity Commissioner within the meaning of Section 2(c) of the Act.

11. We deem it appropriate to grant him some time to purge the contempt by submitting an unconditional apology and undertaking, if he so desires, so as to give him the benefit under the proviso below Section 12(1) of the Act. We

further deem it appropriate to hear the respondent on the point of punishment if he does not desire to purge the contempt.

12. Hence, stand over to 12/10/2006.

(Naresh H. Patil, J.) (B.H. Marlapalle,J.)